



5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 222, and 252

[Docket DARS-2018-0016]

RIN 0750-AJ67

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Representation Regarding Combating Trafficking in Persons" (DFARS Case 2018-D003)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a provision that is no longer necessary and duplicative of an existing Federal Acquisition Regulation (FAR) clause.

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove the DFARS provision 252.222-7007, Representation Regarding Combating Trafficking in

Persons, the associated provision prescription at DFARS 222.1771, and cross references to the provision at DFARS 204.1202 and 212.301. The DFARS provision notified offerors that, by submitting their offer to the Government, they certify that they will not engage in trafficking in persons in performance of the contract, will have policies in place to protect the rights of its employees, and have notified employees and subcontractors of their responsibility to report trafficking in persons violations and their protection from reprisal for reporting any such violation.

However, the United States Government has laws that prohibit trafficking in persons at 22 U.S.C. chapter 78 and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts. In addition, FAR clause, 52.222-50, Combating Trafficking in Persons, provides comprehensive guidance to contractors to ensure their compliance with the Government's laws and policies on trafficking in persons when performing under a Federal contract. Specifically, the FAR clause prohibits contractors from engaging in trafficking in persons during the performance of the contract, requires contractors to notify its employees and subcontractors of the Government's policy on trafficking in persons, and requires the contractor to have a compliance plan in place to ensure agreement with Federal law and policy. The purpose of the DFARS

provision was to simply affirm that the contractor will comply with Federal trafficking in persons laws and policies. The provision contained no guidance or policy unique to DoD. As such, this DFARS provision is unnecessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the Federal Register at 82 FR 35741 on August 1, 2017, and requested public input. Two public comments were received on this provision. Both comments recommended elimination of the provision, as it is unnecessary. Subsequently, the DoD Task Force reviewed the requirements of DFARS provision 252.222-7007, Representation Regarding Combating Trafficking in Persons, and determined that the DFARS coverage was unnecessary and recommended removal.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact existing provisions or clauses. The rule merely removes DFARS provision 252.222-7007, Representation Regarding Combating Trafficking in Persons that is redundant to FAR clause, 52.222-50, Combating Trafficking in Persons.

III. Publication of this Final Rule for Public Comment is not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule merely removes an obsolete provision from the DFARS.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Exe This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under EO 12866.cutive Order 13771

This rule is not an E.O. 13771, Reducing and Controlling Regulatory Costs, regulatory action, because this rule is not significant under EO 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 212, 222, and 252

Government procurement.

Amy G. Williams,

Deputy, Defense Acquisition Regulations System.

PART 204—ADMINISTRATIVE MATTERS

Therefore, 48 CFR parts 204, 212, 222, and 252 are amended as follows:

1. The authority citation for parts 204, 212, 222, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.1202 [Amended]

2. Amend section 204.1202 by—

- a. Removing paragraph (2)(iv); and
- b. Redesignating paragraphs (2)(v) through (xiv) as paragraphs (iv) through (xiii), respectively.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

3. Amend section 212.301 by—

- a. Removing paragraph (f)(viii); and
- b. Redesignating paragraphs (f)(ix) through (xx) as paragraphs (f)(viii) through (xix), respectively.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.1771 [Removed]

4. Remove section 222.1771.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.222-7007 [Removed]

5. Remove section 252.222-7007.

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